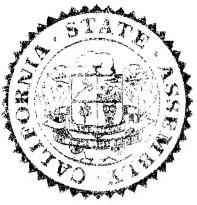


REPORT OF THE
OFFICE OF THE AUDITOR GENERAL

736

PROGRAM DEFICIENCIES
BUREAU OF AUTOMOTIVE REPAIR

MAY 1978



Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL



California Legislature

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May 9, 1978

736

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's report on the compliance of the Bureau of Automotive Repair with legislative intent. The Bureau's objective is to reduce the incidence and impact of fraudulent, negligent and deceptive trade practices by California's auto repair industry against the consuming public.

Item 92 of the 1978-79 budget bill carries an appropriation of \$2,889,511. An additional \$2,623,118 is expected to be paid by members of the consuming public for the Bureau's vehicle inspection program.

The Auditor General finds the Bureau's administration of its programs seriously deficient. Director Richard B. Spohn finds the report filled with false statements, half-truths and distortions. We leave it to the legislative fiscal subcommittees to separate the wheat from the chaff during their review of Item 92 of the annual budget bill.

By copy of this letter, the Department is requested to advise the Joint Legislative Audit Committee within sixty days of the status of implementation of the recommendations of the Auditor General that are within the statutory authority of the Department.

The auditors are Harold L. Turner, Audit Manager; Eugene T. Potter; Douglas L. Williams; Ann Arneill; and Dennis C. Reinholtzen.

Respectfully submitted,

MIKE CULLEN
Chairman

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SUMMARY

The Bureau of Automotive Repair (Bureau) registers and regulates most automotive repair dealers (ARDs); licenses and regulates official smog, lamp and brake stations; administers examinations and issues licenses for installer/adjusters at official stations; and mediates consumer complaints.

The Bureau has directed its resources toward its complaint mediation program to the detriment of its other functions. Specifically, we found that:

- Sixty-two percent of the 562 official smog stations inspected in February 1978 had deficiencies that inhibited the accurate inspection and certification of vehicle pollution control devices. The Bureau has de-emphasized its role in regulating and inspecting these stations (page 6)
- The Bureau has discontinued its program of periodic inspections of official lamp and official brake stations. As a result, there is virtually no assurance that these stations are adequately correcting or certifying correction of these safety defects (page 13)
- The complaint mediation program is limited because the Bureau does not mediate mechanic incompetence allegations (page 16)

- The Bureau has failed to detect and register an estimated 3,000 repair facilities. As a result, the Bureau has lost over \$1.1 million in revenue since 1972 (page 23)
- The Bureau has lost revenue because it has not collected delinquent registration fees in a timely manner (page 27)
- The Bureau has failed to maintain a complete record of all registered automotive repair dealers (page 32)
- The Bureau has inadequate cashiering and funds control (page 34)
- The Bureau has inadequate inventory control procedures (page 37).

We present specific recommendations to correct each of these deficiencies.

The Director of the Department of Consumer Affairs reacted negatively to this report and generally disagreed with the findings, conclusions and recommendations. We have not attempted to rebut the Director's counterarguments because we believe that the contents of this report adequately address the issues and further discussion herein would be redundant. Nonetheless, readers of this report and the Director's comments may conclude that the issues on both sides require resolution. We recommend that this be done in a public forum before committees of the Legislature in order that the principal function of the Bureau and the Department--Consumer Protection--may be assured.

INTRODUCTION

In response to a resolution of the Joint Legislative Audit Committee, we have conducted an audit to determine if the Bureau of Automotive Repair (Bureau) is effectively achieving its statutory mandates and legislative intent. This audit was conducted under the authority vested in the Auditor General by Section 10527 of the Government Code.

This report (1) presents an analysis of the following bureau activities: (a) official stations programs, (b) consumer protection, and (c) internal operations; and (2) identifies those areas where we feel that the activities can be improved.

AUTOMOTIVE REPAIR ACT OF 1971

The Automotive Repair Act of 1971 (Business and Professions Code, Section 9880 et seq.) established the Bureau of Automotive Repair as a regulatory agency within the Department of Consumer Affairs, which has the power to adopt and enforce regulations to carry out the purposes of the Act. The Bureau is headed by a chief, who is appointed by the Governor and serves under the direction and supervision of the Director of the Department of Consumer Affairs.

JURISDICTION

Headquartered in Sacramento, the Bureau operates enforcement and investigation activities through six field offices located in Sacramento, San Jose, Fresno, Los Angeles, Santa Ana and San Diego. The Bureau's principal duties include auto repair dealer registration, consumer protection, complaint handling, enforcement and licensing.

The Bureau also has 85 positions assigned to support the California Vehicle Inspection Program (VIP); however, the VIP is not directly involved with enforcement of the Automotive Repair Act. The VIP was enacted by separate statute, Business and Professions Code, Sections 9889.50 et seq., to reduce smog in the South Coast Air Basin counties (Los Angeles, Riverside, San Bernardino, Orange, Santa Barbara and Ventura). The VIP requires mandatory periodic inspection and repair of vehicles that emit excessive pollutants. The Air Resources Board is responsible for the overall direction of the VIP, which is currently funded by money borrowed from the Motor Vehicle Account of the Transportation Fund.

Bureau operations, except the VIP activities, are funded entirely by proceeds from regulatory licenses, document sales, interest income and registration fees. During fiscal year 1976-77, bureau expenditures were approximately \$4.8 million including \$1.3 million for the VIP. Income during this period was approximately \$5.1 million, including \$1.3 million reimbursed for VIP expenditures.

SCOPE OF REVIEW

We have evaluated the efficiency and effectiveness of the Bureau's consumer protection activities; the brake, lamp and pollution control device (smog) official stations programs; and internal operations. We have also reviewed those operations for legal compliance. We did not review the California Vehicle Inspection Program, which is directed by the Air Resources Board under interagency agreement. We conducted an analysis of this program in 1976 and issued our report No. 264, Report on the South Coast Air Basin Vehicle Inspection Program.

AUDIT RESULTS

DEFICIENCIES THAT INHIBIT ACCURATE INSPECTION AND CERTIFICATION OF POLLUTION CONTROL DEVICES

Official motor vehicle pollution control stations are licensed by the Bureau of Automotive Repair to inspect and certify pollution control devices on automobiles and trucks. We estimate that last year Californians spent approximately \$45 million certifying their vehicles at these stations. Yet, 62 percent of the 562 official stations inspected in February 1978 had deficiencies that inhibit accurate inspection and certification.

Any time a vehicle is sold or an out-of-state vehicle requires a California registration, it must be inspected at an official smog station which certifies that it meets California emission laws. To become an official motor vehicle pollution control device installation and inspection station (smog station), an automotive repair dealer must: (1) apply for a smog station license, (2) provide and maintain the necessary tools and tune-up equipment, (3) maintain appropriate manuals, bulletins and instructions issued by the Bureau and the industry, (4) employ a licensed installer, and (5) properly follow inspection procedures. There are approximately 8,200 licensed smog stations and 28,000 licensed installers participating in this voluntary program.

The Bureau is required to ensure that licensed official stations properly inspect and certify pollution control devices. The Bureau states that their enforcement program is educationally oriented and aimed at securing voluntary compliance. Rather than issue notices of violations, the Station Vehicle Inspection Specialists (SVIS) normally just instruct licensed installers as necessary to ensure that they understand and follow inspection procedures.

Section 9889.18 of the Business and Professions Code specifies that a licensed smog installer employed in an official station must inspect, repair and certify smog control devices in conformity with the California Vehicle Code and bureau instructions. The Bureau has promulgated such instructions in regulations and handbooks. The Bureau's Handbook for Installation and Inspection Stations: Pollution Control Device, however, has not been updated to reflect any new emission standards for vehicles (1975 and later) that are required to have catalytic converters. The official stations' compliance with bureau instructions is primarily verified by SVISs, who conduct initial inspections, prior to issuance of official station licenses, and periodic inspections of the stations to ensure compliance with regulations.

Despite the importance of the inspection program, the Bureau in 1975 reduced by 62 percent the official station enforcement program staffing by transferring 29 of 47 SVISs to auto repair complaint mediation duties. Prior to fiscal year 1975-76, the Bureau was under an interagency agreement with the Air Resources Board to perform two inspections per year of at least 98 percent of the official smog stations and the balance at least annually. After the transfer of inspection personnel, subsequent interagency agreements did not specify the frequency of inspections. During fiscal year 1976-77 the Bureau conducted an average of only .7 inspections per station.

The frequency of station inspections varied among geographical areas. According to an SVIS in San Joaquin County, periodic inspections had not been conducted there for at least two years prior to January 1978. In Sacramento County nearly 42 percent of the 333 official smog stations had not been inspected since their initial inspection prior to licensing. Nearly half of the remaining 58 percent had not been inspected during the past three years.

We examined all of the official station inspection reports from the month of February 1978 and found that 62 percent of the stations had deficiencies that would inhibit accurate inspection and certification of pollution control devices (see Table 1). Other minor deficiencies were found in another 6 percent of the stations.

TABLE 1

INSPECTION OF SMOG STATIONS
BUREAU OF AUTOMOTIVE REPAIR
FEBRUARY 1978

<u>Districts</u>	<u>Smog Stations*</u>	<u>SVISs Per District</u>	<u>Number of Stations Inspected</u>	<u>Number of Stations With Major Deficiencies</u>	<u>Percent of Stations With Deficiencies</u>
Sacramento	1,779	2	56	43	76.8
San Jose	1,479	2	108	65	60.2
Fresno	484	2	102	50	49.0
Los Angeles	3,187	6	204	140	68.6
Santa Ana	674	2	61	28	45.9
San Diego	<u>608</u>	<u>2</u>	<u>31</u>	<u>24</u>	<u>77.4</u>
Total	<u>8,211</u>	<u>16</u>	<u>562</u>	<u>350</u>	<u>62.3</u>

* Licensed facilities as of December 1977.

Many of these official smog stations were violating more than one section of the regulations. The percentage of occurrence of violations found at the stations in the February 1978 survey is shown in Table 2.

We estimate that consumers in California spent approximately \$45 million last year to certify their smog devices. However, the high percentage of deficient smog stations (62 percent) raises serious question about the effectiveness of the Bureau's smog program.

The Bureau is unable to maintain the frequency of contact necessary to ensure that official stations properly inspect and certify pollution control equipment. Bureau personnel estimate that the field force would have to be increased by 11 SVISs in order to inspect the 8,200 smog stations twice a year. While the additional cost of the personnel is estimated at \$308,000 annually, the revenue produced by the smog program generated a surplus of revenue over expenditures of \$350,000 in fiscal year 1975-76 and \$750,000 in fiscal year 1976-77. Therefore, the Bureau had the resources available to staff the program at the level described above. Rather than use these funds in the smog program, the Bureau has de-emphasized the inspection of smog stations and has used a portion of the money to subsidize other bureau activities.

CONCLUSION

Sixty-two percent of the 562 official smog stations inspected in February 1978 had deficiencies that inhibited the accurate inspection and certification of pollution control devices. The Bureau has not maintained the frequency of contact necessary to ensure that official stations properly inspect and certify pollution control equipment.

RECOMMENDATION

The Bureau should increase its pollution control enforcement program's staffing so that an adequate number of inspections are performed. It should also issue notices of violations. Additionally, the Bureau should update its handbook and technical publications to reflect current pollution control technology.

BENEFIT

With more rigorous enforcement, deficiencies in official smog stations could be identified and corrected, so that the consumer could be assured that his vehicle is properly inspected and certified.

NO ASSURANCE THAT OFFICIAL LAMP OR
OFFICIAL BRAKE STATIONS ARE PROPERLY
ADJUSTING AND CERTIFYING LAMPS AND BRAKES

The Bureau of Automotive Repair licenses official lamp and official brake stations to certify that lamp and brake defects cited by the California Highway Patrol (CHP) or other enforcement agencies have been corrected. The Bureau has virtually ceased inspecting facilities after initial licensing or verifying that the facilities employ licensed adjusters. Consequently, there is little assurance that stations are properly adjusting and certifying lamps and brakes.

To become an official lamp or brake station, a registered automotive repair dealer (ARD) must submit an application with a \$10 fee and meet specific equipment requirements and performance standards. It must also employ a licensed adjuster to certify that lamp and brake defects have been corrected.

The Automotive Repair Act requires the Director of Consumer Affairs to issue licenses for official lamp and brake adjusting stations and lamp and brake adjusters. The Director is authorized to adopt regulations specifying the required equipment and other qualifications for station licensing and the testing of adjusters employed in official stations. The licensed adjusters are required to make inspections and adjustments in conformity with bureau instructions.

The Bureau conducts inspections of stations applying for licenses the first time, but has ceased its program of periodic inspections of existing brake and lamp stations. As of June 30, 1977, there were approximately 4,500 official lamp stations and 3,300 official brake stations. During fiscal year 1976-77, 289 and 272 new licenses were issued for lamp and brake stations respectively. Therefore, approximately seven percent of the lamp and brake stations were inspected that year.

Prior to 1975 the Bureau performed both initial and periodic inspections of official lamp and brake stations; however, in 1975 the periodic inspection program was discontinued as a result of the Bureau's reorganization. Bureau staff told us that before discontinuing these inspections, violations of bureau regulations were found at 30 to 40 percent of the stations.

The CHP issued over 60,000 lamp and brake citations during 1977. Official lamp and brake stations had to certify each of the corrections. Without periodic inspection of these stations, there is no assurance that they are employing licensed adjusters or are properly equipped to inspect and certify lamps or brakes.

The Legislature has required that the correction of lamp and brake safety defects be certified by official stations. The programs are self-supporting from revenue provided from licensing fees and document sales. The revenue produced from the lamp and brake programs exceeded

expenditures by approximately \$47,000 in fiscal year 1975-76 and \$30,000 in fiscal year 1976-77. A portion of these surpluses were used by the Bureau to subsidize other bureau activities.

CONCLUSION

The Bureau has virtually discontinued periodic inspections of official lamp and official brake stations. As a result, there is virtually no assurance that official lamp and brake stations are adequately correcting or certifying correction of safety defects in lamp and brake systems. Revenue which could be used to provide that assurance has been diverted to other bureau activities.

RECOMMENDATION

The Bureau should reinstitute a program of periodic inspections of official lamp and official brake stations.

BENEFIT

Deficiencies in official lamp and brake stations could be identified and corrected so that the consumer could be assured that safety defects in vehicle lamp and brake systems are properly corrected and certified.

COMPLAINT PROGRAM LIMITED BECAUSE
THE BUREAU DOES NOT MEDIATE
MECHANIC INCOMPETENCE ALLEGATIONS

The Bureau's jurisdiction for mediating consumer complaints is limited in practice to complaints involving registration or disclosure violations such as: (1) not providing a written estimate for work to be performed, or (2) exceeding the estimate given. The leading consumer complaint allegation, mechanic incompetence, is currently outside the Bureau's jurisdiction. The Bureau could make some of these complaints jurisdictional by adopting "accepted trade standards" to provide a yardstick against which to measure the quality of repair work. Making the balance of these allegations jurisdictional would require expanding the Bureau's statutory authority.

The Automotive Repair Act requires the Director of the Department of Consumer Affairs to investigate violations of the Act and regulations adopted pursuant to it. The Director is also mandated to establish procedures for accepting complaints from the public against auto repair facilities.

In fiscal year 1976-77 the Bureau received 111,176 consumer inquiries on its toll-free telephone lines and 27,472 complaints. The Bureau closed 27,281 complaints that year. The Bureau estimates that these complaint mediations returned \$799,155 to complainants in the form of adjustments, refunds or rework. A profile of the Bureau's enforcement activity and a fiscal analysis of the complaint process is included in the Other Pertinent Information section of this report (see page 40).

Although the Bureau processes a large number of complaints each year, its complaint mediation is severely restricted by its limited jurisdiction. The Bureau had jurisdiction in only 42 percent of the complaints which it closed in fiscal year 1976-77. (A closed complaint is one in which the Bureau has taken its final action.)

TABLE 3

JURISDICTIONAL AND NONJURISDICTIONAL COMPLAINTS
BUREAU OF AUTOMOTIVE REPAIR
FISCAL YEAR 1976-77

	<u>Number of Closed Complaints</u>	<u>Percent of Total</u>
Closed Complaints	27,281	100.0
Less Nonjurisdictional Complaints	<u>15,731</u>	<u>57.7</u>
Jurisdictional Complaints	<u>11,550</u>	<u>42.3</u>

Of the 11,550 jurisdictional complaints, violations of the Automotive Repair Act were confirmed in 6,425 (55.6 percent) of the cases.

TABLE 4

CONFIRMED AND UNCONFIRMED VIOLATIONS
BUREAU OF AUTOMOTIVE REPAIR
FISCAL YEAR 1976-77

	<u>Number of Jurisdictional Complaints</u>	<u>Percent of Total</u>
Total Jurisdictional Complaints	11,550	100.0
Less Unconfirmed Violations	<u>5,125</u>	<u>44.4</u>
Confirmed Violations	<u>6,425</u>	<u>55.6</u>

The major allegations raised by complainants against repair facilities during fiscal year 1976-77 are categorized below.

TABLE 5

JURISDICTIONAL AND NONJURISDICTIONAL ALLEGATIONS*
BUREAU OF AUTOMOTIVE REPAIR
FISCAL YEAR 1976-77

<u>Jurisdictional</u>	<u>Number of Allegations</u>	<u>Percent of Total</u>
No written estimate provided to customer	5,960	12.4
Charges exceeded written estimate	2,812	5.9
Invoice violation	2,789	5.8
Work authorization violations	2,298	4.8
Unregistered repair facility	1,844	3.8
Fraud	1,294	2.7
Other	<u>7,538</u>	<u>15.7</u>
Total jurisdictional allegations	<u>24,535</u>	<u>51.1</u>
<u>Nonjurisdictional</u>		
Incompetence	8,231	17.2
Inconvenience	4,055	8.5
Used car--not repair related	3,072	6.4
New car--not repair related	2,383	5.0
Other	<u>5,672</u>	<u>11.8</u>
Total nonjurisdictional allegations	<u>23,413</u>	<u>48.9</u>
Total	<u>47,948</u>	<u>100.0</u>

* The percentage of jurisdictional to nonjurisdictional complaints in Table 3 and allegations in Table 5 are not the same because a complaint may have more than one allegation.

Over 17 percent of the allegations during fiscal year 1976-77 charged mechanic incompetence. This represents a 66 percent increase in incompetency allegations over the prior year. Yet mechanic incompetence, the most frequent allegation, is nonjurisdictional. A recent complaint illustrates that the Bureau can only mediate disclosure violations and has no authority to deal with mechanic incompetence issues:

A young woman took her car to a repair dealer because it was overheating. She made seven separate trips to the shop, which installed two thermostats, replaced the water pump and both timing chains, rodded out the radiator and resurfaced the engine head. None of these repairs, which cost the woman \$900, corrected the overheating problem. According to the Bureau's complaint investigator, a simple pressure check of the radiator would have revealed that the real problem was a hole in the cylinder head. The mechanic eventually discovered this through trial and error rather than through competent diagnosis.

After \$900 of repairs, the woman was still faced with \$400-\$800 of additional costs to replace the cylinder head. At this point she contacted the Bureau. The complaint investigator discovered that the facility had failed to provide written estimates for some of the work and had exceeded the estimates in other instances. Therefore, he was able to mediate a \$400 refund.

Had the repair facility obtained authorization from the customer for the additional repairs, the Bureau could not have mediated the complaint even though the mechanic showed gross incompetence in diagnosing the defect. The Bureau could do nothing about the \$500 worth of repairs covered by written estimates although these repairs failed to correct the overheating problem.

Making mechanic incompetence allegations jurisdictional would require expanding the Bureau's statutory authority. However, the Bureau could mediate some of these allegations by adopting trade standards for good and workmanlike repair. The Business and Professions Code provides that the Director may refuse to validate or may invalidate an ARD's registration for various types of misconduct including a willful departure from or disregard of accepted trade standards for good and workmanlike repair.

Trade standards are intended to: (1) establish criteria or standards against which to measure the quality of repairs done by mechanics, and (2) provide consistent definitions of terms and services performed, i.e., differences between rebuilt, reconditioned and remanufactured parts.

In its statement of program objectives for fiscal years 1975-76 and 1976-77, the Bureau declared an intent "to establish accepted trade standards for good and workmanlike repairs." So far only one such standard has been adopted. This trade standard, which became effective in 1976, established the general requirements for inspecting, selling and installing ball-and-socket assemblies in vehicle front suspension and steering systems. This trade standard was established because of a high incidence of consumer complaints. The Bureau did not have any information available that addressed the effectiveness of this trade standard.

Minutes of the Bureau's Advisory Board meetings show that the Board at one time did endorse the development of accepted trade standards through a joint effort of the Bureau, the Board and the industry. Later the Board suggested that the standards be rewritten in layman's language and used as consumer tips instead. The Bureau's interest in trade standards has apparently increased, and it is again proposing their adoption.

Bureau staff told us that the types of repair services which are most in need of trade standards are automatic transmission repair, engine overhaul, tune-ups, brake service, steering and suspension. Although the Bureau has drafted trade standards in most of these areas, they were neither adopted nor incorporated into regulations.

CONCLUSION

The Bureau mediates complaints alleging disclosure violations of the Automotive Repair Act. However, the leading allegation, mechanic incompetence, is outside the Bureau's jurisdiction. The Bureau has the power to adopt accepted trade standards to help in mediating some mechanic incompetence allegations. But the Bureau requires additional statutory authority to mediate the balance of these incompetence allegations.

RECOMMENDATION

The Bureau should present to the Legislature by January 1979 a comprehensive proposal, including recommendations for additional legislation enabling the Bureau to mediate mechanic incompetence allegations.

BENEFIT

The Bureau would significantly improve its service to the consumer because it could mediate complaints alleging mechanic incompetency.

LOSS OF \$1.1 MILLION IN
REGISTRATION REVENUE

Based upon a telephone survey of three counties and one city, we estimate that approximately 3,000 repair facilities engaged in business statewide are not registered with the Bureau of Automotive Repair as required. This represents 8.5 percent of the total registered facilities. By failing to detect unregistered facilities and ensure compliance with the ARD registration requirement, we project that the Bureau has foregone approximately \$1.1 million of registration fee revenue and interest earnings since it began operation in 1972. This has happened because the Bureau has not implemented a formal program to detect unregistered auto repair facilities.

Section 9884 of the Business and Professions Code requires every ARD to register with the Bureau. The Chief of the Bureau is responsible for enforcing and administering this registration requirement. An ARD is defined as a person who, for compensation, repairs and diagnoses malfunctions of motor vehicles. The Act covers all motor vehicle maintenance and repairs except some minor services customarily performed by gasoline service stations.

To register with the Bureau, a repair dealer must submit a properly completed application form and a \$50 registration fee. As of March 7, 1978, there were approximately 31,000 registered ARDs in the State. Registration fees provided nearly \$1.8 million in revenue to the Bureau in fiscal year 1976-77.

We conducted a study to estimate the number of unregistered facilities operating in the State. We selected three counties: Imperial, Marin and Santa Cruz; and one city: Redding. These areas were selected on a geographical basis and with concurrence of bureau personnel. By cross-checking the telephone yellow pages from those areas against the Bureau's computerized registration records, we identified the facilities not on the registration list. We called each facility to determine if it was still in operation and if it was required to be registered. The survey disclosed 73 unregistered repair facilities which were required to be registered. These unregistered facilities amount to 8.5 percent of the 863 ARDs currently registered in the test areas. The chart below summarizes the results of our survey:

TABLE 6
SURVEY OF REGISTERED AND UNREGISTERED ARDs
MARCH 1978

<u>Area</u>	<u>Number of Currently Registered Facilities</u>	<u>Number of Unregistered Facilities</u>	<u>Unregistered As a Percent of Registered</u>
Imperial County	118	15	12.7
Marin County	347	28	8.1
Santa Cruz County	239	20	8.4
Redding	<u>159</u>	<u>10</u>	<u>6.3</u>
Total	<u><u>863</u></u>	<u><u>73</u></u>	8.5

In addition to the 73 unregistered facilities, 26 repair facilities (3 percent) were operating with invalid registrations because they had failed to pay the required renewal fee.

We estimate that since 1972 the Bureau has foregone approximately \$1.1 million in registration fees and interest earnings (see Appendix A), because it did not have a program to detect these unregistered facilities.

In addition to the above unregistered facilities, the Bureau received complaints against 1,086 unregistered facilities in fiscal year 1976-77. Of these facilities, 637 were contacted by field office complaint handlers, who either registered the facilities when they mediated the complaints or determined that the facilities did not need to be registered. In May 1977 the Bureau began a program to register the remaining 449 facilities. As of January 1978, this program was still not fully operational. The Bureau had contacted 269 of the 449 unregistered facilities and had registered 37 of them. The Bureau has failed to make contact or follow-up on initial contacts in 76 percent of the cases.

The incidence of unregistered facilities was also confirmed in a study we requested to be conducted by the field complaint personnel in the Los Angeles District Office. They performed random inspections of repair facilities during February 1978 to determine their registration status. During the normal course of the complaint personnel's travel, they inspected facilities they had never previously contacted. Of the 142 facilities inspected, 54 (38 percent) were unregistered. Nine other facilities' registrations were invalid because they were delinquent. These random inspections alone generated \$2,325 in additional registration fees.

Although we used telephone advertisements in identifying unregistered repair facilities, we also investigated other possible sources of lists to aid the Bureau in detecting unregistered facilities. We found that the Department of Benefit Payments has an extensive industrial coding system and data base that identifies auto repair categories such as general auto, body shops and auto paintshops. The Board of Equalization also has a coded information system which identifies various automotive repair classifications. Bureau officials state that they are exploring these as well as other alternatives to identify unregistered facilities.

CONCLUSION

We estimate that approximately 3,000 repair facilities engaged in business statewide are not registered with the Bureau. To date the Bureau has not implemented a program to effectively identify unregistered facilities and, as a result, has foregone approximately \$1.1 million in registration fees and interest earnings.

RECOMMENDATION

The Bureau should implement an effective program to detect unregistered automotive repair facilities. Further, the Bureau should report to the Legislature by January 1979 on the implementation and effect of such a program.

BENEFIT

The Bureau could increase its revenue and better fulfill its statutory authority to register all repair facilities.

FAILURE TO FOLLOW UP ON
DELINQUENT REGISTRATIONS

During the first five years of its operation, the Bureau did not emphasize the collection of delinquent registration fees. A new delinquent program, implemented in April 1977, has not become fully operational. Because of the Bureau's laxity and untimeliness in pursuing delinquent fee collection, it has lost an undetermined amount of revenue.

Section 9884.6 of the Business and Professions Code, provides that every automotive repair dealer register with the Bureau. Yet last year approximately 5,200 ARDs failed to renew their registrations prior to the expiration date. A facility that renews its registration after the expiration date is required to pay a \$25 penalty fee in addition to the \$50 registration fee.

Prior to April 1977, the Bureau did not have an adequate program to collect delinquent registration fees. At the time of our audit, a new delinquent registration program to correct this problem still had not been fully implemented. However, since we began reviewing the delinquent program, the Bureau's efforts to implement it have intensified.

The Bureau's delinquency program procedures specify that a delinquency notice be sent 60 days after a registration expires. A facility failing to respond to the first notice is supposed to receive a second notice by registered mail 15 days later. If the facility still fails to respond within the next 15 days, the case should be forwarded to the local district office for investigation.

The Bureau does not notify facilities within 60 days of their expiration date. As of March 1978, the Bureau was contacting facilities that had been delinquent for nine months. Furthermore, it is not complying with the 15-day time interval between each mailing and field referral. The interval between the first and second mailing ranges from one to four months and averages two months. The interval between the second mailing and field referral ranges from one to four months and averages two and one-half months. The principle cause of the untimely follow-up is inadequate program emphasis and staffing.

The following table shows the results of the Bureau's delinquent follow-up activity to date:

TABLE 7

**RESULTS OF DELINQUENT FOLLOW-UP
BUREAU OF AUTOMOTIVE REPAIR
AS OF FEBRUARY 10, 1978**

	<u>Number of Facilities</u>	<u>Percent of Total</u>
1. Facilities contacted and registering (fee collected)	751	11.6
2. Facilities contacted--already registered	237	3.7
3. Facilities contacted--no response	1,050	16.3
4. Facilities contacted and out of business or no longer doing repairs	1,515	23.6
5. Facilities not contacted-- undeliverable by post office	<u>2,890</u>	<u>44.8</u>
Total	<u>6,443</u>	<u>100.0</u>

The high percentage of undeliverable notices (44.8 percent) may be due to the length of time between the expiration of the registration and initial contact by the Bureau. In addition to the 6,443 delinquent facilities that the Bureau tried to notify, it has not attempted to contact another 1,300 delinquent facilities.

Another problem with the delinquent program is that in 31 percent of the cases referred to the field for follow-up, the Bureau headquarters has received no response from the district offices. This problem probably results from the low priority placed on delinquent collections by field personnel.

As of February 10, 1978, bureau records identified 3,712 repair facilities which had been delinquent for over one year. Not all these facilities are still in business; however, those that do re-register only have to register for the current year, although they were unregistered for at least the prior year. Based on the Legislative Counsel's opinion #17602, dated April 5, 1978 (see Appendix B), the Bureau is not authorized to collect registration or delinquent fees from ARDs for prior years of unregistered activity.* By failing to conduct timely follow-up on delinquent registrations, the Bureau forfeits the \$75 delinquent registration fee for the prior license year.

CONCLUSION

Because of inadequate management emphasis, the delinquent program has not been adequately staffed to permit timely collection of delinquent fees. The Legislative Counsel advises that the Bureau cannot collect delinquent fees for prior years of unregistered activity. Therefore, the Bureau has lost revenue because it has not collected delinquent fees in a timely manner.

RECOMMENDATION

The Bureau should increase staffing of the delinquent program so that delinquent registration fees may be collected in a timely manner.

* Assembly Bill No. 3017 could alleviate this restriction by imposing cumulative liability upon an ARD for registration fees arising from failure to register.

BENEFIT

By collecting delinquent fees during the same year the facility becomes delinquent, the Bureau could increase its revenue.

**FAILURE TO MAINTAIN A COMPLETE RECORD OF
ALL REGISTERED AUTOMOTIVE REPAIR DEALERS**

Section 9882.4 of the Business and Professions Code requires the Director of the Department of Consumer Affairs to keep a complete record of all registered auto repair dealers showing their names and addresses. The Bureau is required to send repair facilities a semi-annual newsletter describing recently adopted regulations, proposed regulations, disciplinary hearings and other enforcement information. The mailing list is derived from the registration roster, which is incomplete.

The Bureau's primary means for maintaining current registration records is to update the files with changes submitted by the ARDs on the annual registration renewal cards. Although that is probably the most efficient method of updating the records, these records are incomplete because the Bureau: (1) is failing to follow-up on delinquent renewals in a timely manner, (2) is not updating its computerized records in a timely manner once the information becomes available from the delinquent program, and (3) is three months behind in processing registration applications. As a result of the processing delay, approximately 1,300 applications received between January and April are not on the registration roster. In addition, since the Bureau does not have a program to detect unregistered facilities, we estimate that at least 3,000 other repair facilities are also excluded from this list.

CONCLUSION

Because the Bureau does not process new ARD registrations within a reasonable period of time or update their records on a timely basis with information from the delinquent program, its record of registered repair facilities is incomplete. Therefore not all registered facilities receive the Bureau's publications, which inform them of new regulations.

RECOMMENDATION

The Bureau should update its registration roster with information as soon as it becomes available and should process new ARD registrations within a reasonable period of time.

BENEFIT

The Bureau would fulfill its statutory obligation to have a complete list of ARDs and would be able to mail information to all of them.

DEFICIENT CASHIERING AND FUNDS CONTROL

The Bureau has not complied with internal control procedures for collecting and cashiering funds. The violations of sections of the State Administrative Manual (SAM) and specific deficiencies found in cashiering and funds management follow:

- Contrary to Section 8030.1, paragraph 1, accumulated collections in excess of \$500 in cash or \$5,000 in cash and checks remained undeposited for more than five working days
- Contrary to Section 8030.1, paragraphs 2 and 3, field offices that do not have a safe, vault or money chest are allowing excessive levels of cash to accumulate and remain undeposited
- Contrary to Section 8034.1, checks are not being endorsed for deposit on the day they are received in order to prevent their being negotiated if lost or stolen.

In December 1977 the Bureau had approximately \$100,000 of uncashed collections (mostly checks) which had been received over a 60-day period. These improperly controlled checks were stored in different locations throughout the Bureau's Sacramento office. Funds were not cashed as they were received nor within a reasonable period of time thereafter.

Following our review of its cashiering and collection system, the Bureau has improved its control of funds by instituting new procedures to cashier checks as they are received and by increasing the number of staff in their accounting section. They currently make timely deposits of their collections. The importance of having a good security and accounting system for cash and checks is illustrated by the fact that in April of 1978, \$400 was stolen from the Bureau's accounting office. This \$400 was the cash on hand for the Bureau's coffee fund and was stolen out of the safe used to hold both the coffee fund money and the daily receipts. The State Police are currently investigating the theft.

The Bureau also failed to follow reasonable practices in handling and safeguarding money. In some district offices cashiers' change funds had receipts in excess of normal amounts, at times exceeding \$1,000 cash. These funds were locked in a clerk's desk rather than in a vault, safe or money chest. Access to the cash was not restricted to a single cashier and, as such, there was no accountability or control over the cash on hand.

CONCLUSION

The Bureau's controls over cash and checks are inadequate and not in compliance with the State Administrative Manual.

RECOMMENDATION

The Department of Consumer Affairs should ensure that the Bureau complies with the State Administrative Manual procedures for cashiering.

BENEFIT

The Bureau would provide better security for the money in its offices.

INADEQUATE CONTROL OVER
SALEABLE INVENTORY ITEMS

At its Sacramento office, the Bureau stores certificates (smog, lamp and brake), Nox (Oxides of Nitrogen) stickers and handbooks which it sells to official stations. According to the Bureau's procedures, the sale of certificates and Nox stickers must be accounted for on a daily basis, and the total number on hand each month must be inventoried and verified. The Bureau's records indicate that as of March 10, 1978, no monthly inventory had been performed since March 1977. Additionally, some district offices have neglected to reconcile physical inventories with their running monthly balances.

These saleable items are stored at the Bureau's Sacramento office in an unlocked area during the normal workday and are easily accessible by bureau employees or others having business with the Bureau. The need to control these documents is evidenced by the black market in Los Angeles for counterfeit and stolen smog certificates. Allegedly, a blank smog certificate will sell for up to \$200 on the black market.

In addition to inadequate control and security of saleable documents, the Bureau was failing to properly control and dispose of documents which had been retrieved from official stations when they ceased official station functions. The Bureau does not maintain an inventory nor account for these previously sold, unused and retrieved documents. The Bureau's policy is to retain the documents for one year

should the station engage in official station business again and request return of its previously purchased documents. However, the Bureau has not destroyed the documents after one year and, as a result, has 11 containers holding thousands of certificates and stickers which are uncontrolled and should have been destroyed. These documents are not adequately controlled, accounted for or destroyed.

CONCLUSION

The Bureau has not complied with approved inventory control procedures nor properly safeguarded its saleable and recovered documents. Such failure could result in undetected losses of these documents over a prolonged period of time.

RECOMMENDATION

The Bureau should comply with approved inventory control and security procedures for saleable documents in all of its offices. Also, the Bureau should not retain previously sold documents confiscated from official stations, but should issue new certificates and Nox stickers if an official station reactivates within one year.

BENEFIT

The Bureau would improve its security and control of saleable documents.

OTHER PERTINENT INFORMATION

BACKLOG IN PROCESSING

The Bureau is required to register ARDs and to license installer/adjusters. The Bureau's systems for processing new registrations and applications for installer/adjuster licenses is backlogged. The Bureau takes more than 90 days to process applications for registration and over 100 days to test and license installer/adjusters.

The ARD registration backlog increased during our audit. In January 1978 the Bureau had 664 pending applications and was backlogged two months; by April 1978 it had 1,306 pending applications and was backlogged nearly three months. The Bureau receives only 20 ARD applications daily.

In addition to ARD applications, the Bureau receives approximately 60 installer/adjuster license applications daily. As of April 1978, there were over 5,700 pending license applications representing a four-month backlog. New applicants are not permitted to certify equipment or make adjustments at official stations until they are licensed. These backlogs exist because the Bureau has failed to provide adequate staff resources to keep the application processes current.

FISCAL ANALYSIS OF COMPLAINT PROCESSING

The average cost of processing a complaint increased 36 percent from \$53 in fiscal year 1975-76 to \$72 in fiscal year 1976-77. The cost of processing complaints over which the Bureau had jurisdiction increased 73 percent from \$104 to \$181. Concurrently the number of jurisdictional complaints decreased by 8 percent. The cost increase resulted primarily from a reorganization of bureau personnel in which station vehicle inspection specialists in the official stations program were transferred to complaint mediation (see page 8). This increase in personnel costs produced the overall increase in cost per complaint. We estimate that approximately \$1,175,000 (33 percent) of the complaint processing expenditures during fiscal years 1975-76 and 1976-77 were funded by revenue collected from the Bureau's official stations programs for lamp, brake and smog stations (see pages 11 and 15).

ENFORCEMENT ACTIVITY

When a repair facility violates the Automotive Repair Act, the Bureau may employ one or more of the following disciplinary actions:

Notice of Violation--an information document, intended to show the repair dealer what violations have occurred so that they can be corrected. The notice also serves as a record for the bureau.

Office Conference--a meeting at which bureau representatives and repair shop personnel discuss problems the shop has in complying with the law. This is intended to correct the problems without the involvement of other law enforcement authorities.

Citation Hearing--a hearing conducted by a district attorney as an alternative to the filing of a formal criminal or civil complaint. The hearing is documented with the intent of achieving voluntary compliance.

Administrative Action--an action filed by the Attorney General against a registration or license for alleged violations of the Automotive Repair Act with the intent of suspending or revoking the registration or license.

Civil Action--an action filed by the Attorney General or by a district attorney against an automotive repair dealer for unfair competition, deceptive business practices, or false or misleading advertising or statements.

Criminal Action--an action filed by a district attorney against an individual for alleged violations of the Automotive Repair Act or applicable sections of the Penal Code.

Source: Bureau of Automotive Repair, Annual Report 1976-77, page 13.

The following table summarizes enforcement activity in fiscal year 1976-77:

**ENFORCEMENT SUMMARY
BUREAU OF AUTOMOTIVE REPAIR
FISCAL YEAR 1976-77**

Notices of Violation issued	6,205
Office conferences held	34
Citation hearings held	5
Disciplinary actions filed	118
Actions pending as of June 30, 1977	97
Civil actions settled by stipulated agreements*	9
Criminal convictions	27
Registrations suspended	13
Registrations revoked	5
Undercover car operations	81
Violations verified by undercover operations	51

* A stipulated settlement is an agreement reached in a civil or administrative action that precludes the necessity of a formal hearing. These stipulated settlements resulted in the following return of funds for investigative costs and restitution to consumers:

\$ 9,921 to Attorney General and district attorneys for investigation costs

\$ 8,825 to Bureau of Automotive Repair for investigation costs

\$ 4,160 to consumers for restitution

\$45,772 to state and county funds for penalties

Source: Bureau of Automotive Repair, Annual Report 1976-77, page 14.

The undercover car operation, established in 1974, adds an interesting dimension to the Bureau's enforcement program. It is used to gather evidence against repair shops that defraud customers. For example, if a consumer complaint alleges that a repair facility used scare tactics, sold unnecessary repairs or engaged in false advertising, the Bureau might send an undercover vehicle to the facility to confirm the allegation. This evidence aids local law enforcement agencies in prosecuting repair facilities engaged in abusive practices. During the first half of fiscal year 1977-78, undercover cars were used in 30 investigations, which confirmed 21 violations.

CONTINUOUS CONSUMER SURVEY

In 1975 the Bureau initiated an independent consumer survey program to measure the attainment of the following objectives:

... to resolve at least 50% of complaints to the satisfaction of the complainant.

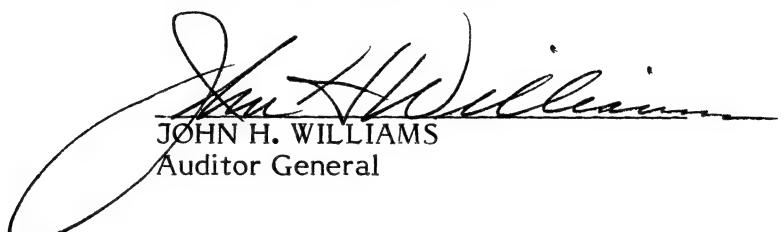
... to handle complaints in such a way that at least 75% of the complainants would contact the bureau again or would recommend the bureau's services to others.*

For purposes of the survey, the Bureau randomly selects 550 closed complaints each month and seeks the complainant's reactions to the complaint program through a post card questionnaire. The Bureau states that the data is gathered on a monthly basis to stabilize workload and increase the credibility of the responses.

* Bureau of Automotive Repair, Annual Report 1976-77, page 12.

Results of the survey over the past two years do not reflect any appreciable change in consumer satisfaction. Sixty-one percent of those responding on June 1, 1976 were satisfied and 56 percent on January 1, 1978. This slight fluctuation in consumer attitude indicates that the Bureau might better utilize its resources by conducting this survey on a semi-annual rather than a monthly basis.

Respectfully submitted,



JOHN H. WILLIAMS

Auditor General

Date: May 5, 1978

Staff: Harold L. Turner, Audit Manager
Eugene T. Potter
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1020 N STREET, SACRAMENTO, CALIFORNIA 95814



May 4, 1978

Mr. John H. Williams
Auditor General
Joint Legislative Audit Committee
California Legislature
925 L Street, Suite 750
Sacramento, CA 95814

Dear Mr. Williams:

This is in response to your draft report entitled, "Program Deficiencies Bureau of Automotive Repair", May 1978. To the knowledgeable reader, the draft report is far more significant for what it does not say than it is for what it says. The draft report alleges no "deficiencies" in the extent to which the Bureau of Automotive Repair is fulfilling its primary statutory mandate which is to protect the public from fraudulent and deceptive practices and other violations of the Automotive Repair Act by the automotive repair industry. The draft report fails to note that under the current administration, the Bureau has earned a state-wide, national, and international reputation as the leading automotive repair consumer protection agency in the world. The draft report fails to note that the Bureau is widely reputed to be the most visible, accessible, responsive, and effective consumer protection agency in the State of California. This reputation is best summarized in the words of one testifier representing the automotive repair industry before a Senate committee last April, "The Bureau of Automotive Repair is the best regulatory agency our industry does business with." This from an industry spokesperson representing our sharpest critics. Therefore, by omission I conclude that your staff found that the Bureau is achieving its primary consumer protection mission.

By failing to state this fact, the draft report fails in its duty to place in perspective for the uninformed reader the priorities mandated by law and the full extent to which the mandate is being economically, efficiently, and effectively achieved. Given the brief time allotted for reply to your draft report, I will not correct the numerous false statements, half-truths, and distortions contained in the narrative of your draft report but will, instead, reply to each statement in the "summary" and to each of the "recommendations" in the order in which they appear in your draft report.

The "Summary" (p. 1) states:

"Specifically, we found that:

Sixty two percent of the official smog stations had deficiencies that inhibited the accurate inspection and certification of vehicle pollution control devices. The Bureau has de-emphasized its role in regulating and inspecting these stations..."

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The corresponding "Recommendation" states:

"The Bureau should increase its pollution control enforcement program's staffing so that an adequate number of inspections are performed. It should also issue Notices of Violations. Additionally, the Bureau should update its handbook and technical publications to reflect current pollution control technology."

Response 1.

By way of background, the official stations program, of which the motor vehicle control stations are a part, was established by the California Highway Patrol for the purpose of correcting mechanical deficiencies noted on "fixit tickets" issued by patrolmen. The licensed official stations are comprised of registered automotive repair dealers subject to all the provisions of the Automotive Repair Act who have, in addition, voluntarily elected to apply and have been issued one or more official station licenses. Their function is to provide reasonable assurance to the courts that mechanical deficiencies noted on the traffic ticket have been corrected. Corrections are certified by issuance of a Certificate of Compliance or of Adjustment to the motorist for presentation to the court. This program was transferred to the Bureau when it was formed in 1972. The draft report contains no evidence that:

- The number of inspections is less now than at any previous time.
- An increased number of inspections of each station would provide a superior level of public protection over that which currently exists.
- The law or regulations specify the number of inspections to be performed per unit time. Indeed, no such legal requirements exist.

Instead, the reader is left to infer that because fewer employees are conducting the inspections, fewer inspections are being conducted. In fact, what has occurred is that, instead of having all the field staff conduct a few inspections each, a few field staff are now conducting all the inspections thus gaining the benefits of specialization.

Furthermore, since the field inspection staff is limited to sixteen men and therefore cannot be everywhere, sound managerial practice dictates that those field staff resources be deployed where the need is greatest. That is precisely what has happened. Every complaint against an official station is investigated and appropriate action is taken. Inspections are conducted where problems occur. This may mean that some stations are inspected three times yearly and other stations may not be inspected in any given year.

There are three main options in deciding how to deploy an inspection staff. They are listed below in declining order of the level of possible public protection:

- Inspect those stations where violations occur first, and the balance as time permits.

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- Inspect all stations at some fixed frequency per unit time such as once or twice yearly.
- Inspect those stations where violations do not occur first, and the balance as time permits.

Without directly stating a preference, the draft report appears to imply that the second option is the best choice. This would be similar to instructing a police officer on the beat to routinely check the entire beat, needed or not, at the expense of being present at known trouble spots. Clearly, to do this would reduce the level of public protection overall.

Indeed, support for the first option (which the Bureau has chosen) is contained in your draft report on Page 8, "We examined all of the official stations inspection reports from the month of February 1978 and found that 62 percent of the stations had deficiencies"... Note that completed inspection reports were reviewed. If the purpose of inspection is to detect and correct deficiencies, this is precisely what a well-deployed staff should produce. A traffic officer does not pull over every motorist on the highway for a sobriety test, only those who are weaving. It should not be surprising that, in a high percentage of those cases, the driver is found to be drunk. The draft report implies that *62 percent of all stations had deficiencies but gives no supporting evidence.

With regard to Notices of Violation and to updating the pollution control handbook, your staff knew or should have known that:

- The completed inspection report serves the same enforcement purpose as a Notice of Violation. Deficiencies are noted on the report and a specific time is set for correction. If the same deficiencies are found upon re-inspection, then appropriate enforcement action is taken. A Notice of Violation would be redundant paperwork.
- The smog handbook is under revision and is scheduled for completion in June 1978.

The draft report also alleges that monies collected from official stations are being "diverted" to other purposes, thus are subsidizing other programs. Your staff knew, or should have known, that all Bureau operations are supported from the Automotive Repair Fund. During the controversial NOx program, fees collected from automotive repair dealers (non-official stations licensees) "subsidized" the official stations program to the extent of \$1.2 million dollars because the smog stations were not self-sustaining. The pendulum recently has swung in the direction of an excess of revenue over expenditures and will swing back to a deficit situation in 1979 with the implementation of the Vehicle Inspection Program in the South Coast Air Basin. The expected revenue losses will be about \$700,000 per year. Thus it is false to say that an increased inspection staff could be funded out of "excess" revenues.

* Wording changed in final report.

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In sum, the draft report asserts that the smog station program has been "de-emphasized" without adducing evidence or analysis to suggest what constitutes an "adequate" number of inspections or that the current inspection regimen is not providing the most public protection possible within the current staffing authorization. The draft report does not allege that the inspection staff is inefficient, but instead implies that more inspections are necessary. Therefore, more inspectors would be necessary but the report fails to show where the additional staff would come from. All authorized positions are filled.

The "Summary" states that:

"The Bureau has discontinued its program of periodic inspections of official lamp and official brake stations. As a result there is virtually no assurance that these stations are adequately correcting or certifying corrections of these safety defects."

The "Recommendation" states that:

"The Bureau should re-institute a program of periodic inspections of official lamp and official brake stations."

Response 2.

The Bureau has never conducted "periodic" inspections of lamp and brake stations in the sense that such stations were to be inspected a fixed number of times per year. Thus it is meaningless to state that "periodic" inspections have been discontinued.

The lamp and brake components of the official stations program are the oldest and smallest programs in the Bureau and pose the least cause of complaints. These stations are inspected on the following basis:

- Upon initial licensure
- In response to complaints
- Upon request of the licensee
- In conjunction with a smog inspection (many licensees hold more than one station license)
- When an inspector is in the area on other business

The draft report provides no evidence that the number of inspections has declined from previous levels, or that the current inspection regimen is not providing the best possible public protection within the staffing authorization. There is no definition of the level of "periodic" inspections your audit staff would find acceptable. Instead, as in the case of the smog station section of the draft report, there is an unsupported assertion that the number of inspections has declined and an assumed disagreement with a policy decision not a finding of non-compliance with statutory mandate. There is no factual basis or analysis to support the recommendation.

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The draft report concludes that revenues exceeded expenditures by \$47,000 and \$30,000 in fiscal years 1975-76 and 1976-77, respectively. The basis for arriving at these figures is not shown in the draft report. The Bureau analysis is that when all costs have been added including clerical support, licensing and testing clerical support and proctors fees, and allocation of operating expenses and administrative overhead, revenues and expenses balance out over the years although there will be fluctuations from year to year.

The "Summary" states that:

"The complaint mediation program is limited because the Bureau does not mediate complaints alleging mechanic incompetence."

The "Recommendation" states that:

"The Bureau should report to the Legislature by January 1979 on its proposed program to mediate complaints alleging mechanic incompetency. The report should identify the repairs producing the most allegations of mechanic incompetence and should describe the Bureau's progress toward employing trade standards in these areas."

Response 3.

*The jurisdiction of the Bureau is established not by frequency of complaints nor by administrative determination, but by the Automotive Repair Act. While we agree that mechanic incompetence is now the most frequent allegation, the Act does not allow the Bureau to hold an employee mechanic responsible for an incidence of incompetence. The Automotive Repair Act, in its genesis, was a mechanics testing and licensing bill. As enacted, the law specifically excludes employee mechanics and, instead, holds repair facility owners to a standard of conduct which allows for full disclosure to the customer and fair competition within the industry.

The assertion that the Bureau does not mediate complaints alleging incompetency is false. During the period 4/1/77 through 3/31/78, 10,000 complaints alleging incompetence were closed by the Bureau and \$335,665.00 in refunds were obtained for those complainants.

*Finally, while the Bureau is actively pursuing the adoption of trade standards and have concluded hearings on automatic transmission rebuilding, this activity is not a panacea for incompetence complaints. Rather, trade standards define what parts must be used and procedures performed for ball joint replacement or transmission rebuilding, but do not preclude the incompetent installation of those parts or performance of those procedures. Instead, the standards allow the Bureau to discipline those repair facilities which misrepresent the need for ball joint replacement or sell a "rebuilt" transmission which is shy of the minimum number replacement parts necessary to meet the adopted standards.

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As recommended, we shall be pleased to report to the Legislature by January 1979 on the progress of trade standards adoption and enforcement as well as their effect on the ongoing complaint mediation.

The "Summary" states that:

"The Bureau has failed to detect and register an estimated 3,000 repair facilities. As a result, the Bureau has lost over \$1.1 million in revenue since 1972."

The "Recommendation" states that:

"The Bureau should develop an effective program to detect unregistered automotive repair facilities."

Response 4.

The analysis contained in Appendix A of the draft report overstates the amount of foregone interest income by relying on the false assumption that interest income is cumulative throughout the six-year period. There is no evidence in the report to support the notion that the same dealer who was required to be registered in 1972 was still in business in 1977, the assumption upon which the amount of foregone interest income rests. If we assume that the majority of such unregistered dealers are out of business the next year, the analysis overstates the foregone interest by \$181,700.

But there are more serious deficiencies in the report as follows:

- There is no attempt to put the number of unregistered dealers in perspective. In comparison with other regulatory agencies, is 3,000 a high, low, or typical amount?
- There is an assumption that even if all 3,000 could be detected, they could all be registered. This is false. Local prosecutors, on whom we rely to enforce the registration requirement, are loathe to go before a judge on the sole basis of unregistered activity. Enforcement policies vary from county to county.
- There are no cost estimates on the personnel resources and other expenses that would be incurred in gaining registration. Apparently, your staff assumes that this could be done at no cost. This is false. To hire and equip one representative in each district to followup on each recalcitrant unregistered dealer (a reasonable assumption) would cost \$180,000 per year (6 staff times \$30,000 for salaries and vehicle), exceeding the amount that could be collected.
- There is no evidence that such activity has a direct benefit to the consumer. The Bureau now successfully registers those unregistered dealers who have complaints filed against them. These are the ones that present an immediate problem to the public.

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*The recommendation states an "effective program" should be developed but fails to reflect the current efforts of the Bureau to register the unregistered which your staff knows, or should have known, as follows:

- A pilot project was completed last summer using the telephone yellow pages audit technique. Indeed, your staff learned this technique from the Bureau. The other districts were made aware of this approach and are implementing it on a time-available basis.
- The Tax Preparers Program, a sister agency in the Department of Consumer Affairs, has included a notice to all their registered bookkeepers alerting them to the registration requirement so that they can pass the information on to their automotive clients.
- To duplicate the yellow pages audit at Bureau headquarters, two CETA-funded positions are now dedicated to this task.
- The Bureau is now awaiting Governor's Office approval to share information with the Board of Equalization regarding resale sellers permit numbers.
- The Bureau is sharing information with the Department of Health about dealers who fall under the occupational safety regulations dealing with asbestos fibers.
- With regard to the suggestion on page 26, the suggestion to use Department of Benefit Payments' information is infeasible since those records are not open to the Bureau under the law.

In sum, a cost effective program is underway to deal with this perennial problem. We welcome any improvements your staff might suggest.

The "Summary" states that:

"The Bureau has lost revenue because it has not collected delinquent registration fees in a timely manner."

The "Recommendation" states that:

"The Bureau should increase staffing of the delinquent program so that delinquent registration fees may be collected in a timely manner."

Response 5.

The delinquent registration program was initiated after taking the necessary first step of converting to a staggered renewal system. The first cycle was completed in April 1978 and delinquent mailings are now current. Additional staff will not be requested until our experience justifies a need.

* Wording changed in final report.

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The "Summary" states that:

"The Bureau has failed to maintain a complete record of all registered automotive repair dealers."

The "Recommendation" states that:

"The Bureau should update its registration roster with information as soon as it becomes available and should process new ARD registrations within a reasonable period of time."

Response 6.

The Bureau agrees that computer records of registration files should be maintained as currently as possible but disagrees with your staff's conclusion (p. 33) that, "not all registered facilities receive the Bureau's publications, which inform them of new regulations."

Every new registrant is informed of Bureau regulations in a packet which includes the following information:

- A booklet containing the Automotive Repair Act and regulations.
- A copy of a Newsletter which was designed for the express purpose of detailing the disclosure requirements of the Act in words and pictures.
- A letter of welcome from the Bureau in which the addresses and telephone numbers of the headquarters and district offices are included.

Thus, it is false to say that because new registrants do not appear on computer records immediately causes them to be unaware of legal requirements. Furthermore, it is false to say that the Bureau's list of current registrants is incomplete. Your staff has erroneously concluded that the roster is incomplete because the names do not appear on the computer listing. The Bureau still has the documents on file. These documents and the computer listing comprise a complete roster of all registrants at all times as the law requires.

The "Summary" states that:

"The Bureau has inadequate cashiering and funds control."

The "Recommendation" states that:

"The Department of Consumer Affairs should ensure that the Bureau complies with the State Administrative Manual procedures for cashiering."

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Response 7.

The audit staff fails to produce any evidence that any state money is missing or unaccounted for, for any reason, at any time. This record is testimony to the adequate controls of the estimated \$26 million dollars handled since the Bureau's inception in 1972. Nevertheless, an inspection will be made of each district office to insure that money is handled in accordance with written Bureau procedures, departmental policy, and the State Administrative Manual.

We agree that, due to difficulties encountered in converting to a department-wide computer system and to the sudden death of the Bureau's principal cashier, the Bureau's cashiering and funds control was temporarily deficient in December of 1977. However, as the draft report acknowledges on page 35, the Bureau is "currently making timely deposits of their collections."

The "Summary" states that:

"The Bureau has inadequate inventory control procedures."

The "Recommendation" states that:

"The Bureau should comply with approved inventory control and security procedures for saleable documents in all of its offices. Also, the Bureau should not retain previously sold documents confiscated from official stations, but should issue new certificates and NOx stickers if an official station reactivates within one year."

Response 8.

While the draft report fails to produce any evidence that the documents controls now in effect have resulted in any loss at any time, this section identifies a potential problem in the retention of previously sold documents, and the Bureau shall cease to retain them in accordance with the recommendation. Also, further security steps shall be taken to further isolate saleable items from employees who have no need for access.

Topics discussed in your draft report under the heading, "Other Pertinent Information", carry no specific recommendations. Therefore, I will not attempt to correct misstatements here. Should you decide to discuss these items further, my staff and I are at your disposal.

In conclusion, we shall implement those worthy changes noted above but are concerned that the balance of the recommendations would prove to be too costly and have little or no public protection impact. The recommended inspection regimen of lamp, brake, and smog stations alone would have cost the Bureau

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over 1-1/2 million dollars since 1972/73. Without more convincing evidence of the public need, the legislature should not be asked to support such program augmentations.

Sincerely,



RICHARD B. SPOHN
Director

cc: Leonard Grimes
Bob Wiens

APPENDIX A

FOREGONE REGISTRATION FEES AND INTEREST INCOME

<u>Fiscal Year</u>	<u>Number of Registered ARDs</u>	<u>Estimated Number of Unregistered ARDs(1)</u>	<u>Foregone Registration Fees(2)</u>	<u>Foregone Interest Income(3)</u>	<u>Total Lost Revenue</u>
1977-78	35,000 ⁽⁴⁾	2,975	\$148,750	\$ 61,600	\$ 210,350
1976-77	35,455	3,014	150,700	46,500	197,200
1975-76	36,915	3,138	156,900	38,700	195,600
1974-75	36,793	3,127	156,350	35,800	192,150
1973-74	35,167	2,989	149,450	21,600	171,050
1972-73	38,057	3,235	<u>161,750</u>	<u>4,500</u>	<u>166,250</u>
			<u>\$923,900</u>	<u>\$208,700</u>	<u>\$1,132,600</u>

(1) Based on the 8.5 percent rate of unregistered activity identified in our survey of three counties and one city (see page 23).

(2) Based on the \$50 annual registration fee for each unregistered facility.

(3) Lost interest calculations are based on the annual savings rate of the Pooled Money Investment Fund.

(4) Estimated figure.

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Legislative Counsel of California

BION M. GREGORY

Sacramento, California

April 5, 1978

Honorable Mike Cullen
Assembly Chamber

Automotive Repair #17602

Dear Mr. Cullen:

QUESTION

If an automotive repair dealer fails to register or renew his registration while operating a business, is the Director of the Bureau of Automotive Affairs authorized to perform any of the following actions: (a) Collect registration fees for each of the unregistered years of operation; (b) Collect registration fees at the delinquency rate for prior years of unregistered operation; (c) Refuse to issue, sustain or revoke a registration until registration fees in arrears have been paid in full; (d) File charges against any automotive repair dealer who failed to obtain a valid registration for prior years of business operation; or (e) Require either the county or city business licensing facilities to require automotive repair dealers to show proof of registration before granting a business license?

OPINION

With the exception of (d), the director is not authorized to perform any of the above actions.

ANALYSIS

The Automotive Repair Act is contained in Chapter 20.3 (commencing with Section 9880) of Division 5 of the Business and Professions Code.

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Its provisions require that each automotive repair dealer pay the prescribed fee for each place of business operated by him in this state and register with the Director of the Bureau of Automotive Repair upon forms prescribed by him (Sec. 9884, B.& P.C.). A violation of such provisions is punishable as a misdemeanor (Sec. 9889.20, B.& P.C.).

Initially, we note that a public officer or board has not only the powers expressly enumerated by law, but also those implied powers that are necessary to the exercise of such express powers (Lewis v. Colgan, 115 Cal. 529; Crawford v. Imperial Irr. Dist., 200 Cal. 318).

In this regard, as to proposal (d), that is, the filing of charges against an automotive repair dealer who failed to obtain a valid registration for prior years of operation, inasmuch as failure to so register is a misdemeanor (Sec. 9889.20, B.& P.C.), and misdemeanors are prosecuted by written complaints under oath subscribed by a complainant (Sec. 740, Pen. C.; see also Sec. 26501, Gov. C. as to institution of charges by district attorney), the director may institute a prosecution in the proposed instance.

However, with respect to the other questions posed, there is no specific authorization provided for any of the actions in question. Further, we do not think that it can be said that, as a matter of law, the director has the implied power to take the proposed actions on the theory that they are necessary to the administration of the bureau.

Accordingly, in our opinion the director is not authorized to take any of the actions in question, other than proposal (d).

Very truly yours,

Bion M. Gregory
Legislative Counsel

By
Marguerite Roth
Deputy Legislative Counsel

MR:em

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
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